IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975
NO. 75-975

GOVERNMENT OF INDIA, Petitioner

v.

PFIZER, INC., ET AL., Respondents

NO. 75-976

IMPERIAL GOVERNMENT OF IRAN, Petitioner

v.

PFIZER, INC., ET AL., Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

PETITIONERS JOINT BRIEF IN REPLY TO JOINT BRIEF FOR RESPONDENTS IN OPPOSITION

Julius Kaplan
Attorney for Petitioner,
Government of India
Kirkwood, Kaplan,
Russin & Vecchi
1218 - 16th Street, N.W.
Washington, D.C. 20036

Harold C. Petrowitz
Attorney for Petitioner,
Imperial Government
of Iran
Becker, Channell, Becker
& Feldman
1819 H Street, N.W.
Washington, D.C. 20006

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I. Introduction

This brief is filed pursuant to Rule 24(4) of the Rules of this Court in reply to the argument first raised by respondents in their joint Brief

in Opposition that the question of whether foreign sovereigns can sue under the antitrust laws as parens patriae or official representative should not be decided before the question of the standing of foreign sovereigns to sue in any capacity under U. S. antitrust laws is resolved. (Respondents Brief, p. 7.)

II. Argument

In putting their position forward, respondents have failed to set forth fully certain significant facts which completely undermine their argument.

Respondents ~~Petitioners~~ ground their argument on the theory that the "person" issue is not yet "resolved" and that the reason it is not before this Court for resolution at this time is petitioners' opposition to all efforts to have the "person" issue certified for interlocutory appeal.

(1) The "person" issue has been resolved at the District Court level. State of Kuwait, et al. v. Pfizer, Inc., et al., 333 F. Supp. 315 (S.D.N.Y. 1971).[1/] Respondents, however, argue that the issue in the Petition may be resolved only after the "person" issue is decided definitively by this Court (Respondents Brief, p. 10.) In effect, respondents, although recognizing the significance of the parens patriae and official

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1/ This decision has stood for four years as the law of the case (Transcript of pre-trial conference of August 7, 1974, pp. 36-39). Defendants have filed answers in most of the cases, and have been permitted to seek discovery on substantive issues. In the Viet Nam case, plaintiff has produced hundreds of documents, answered numerous interrogatories and brought five top ranking Vietnamese government officials to Washington for lengthy depositions. Also, the Philippines case has proceeded to a consideration of class certification with the National Bank of the Philippines as class representative. Defendants have been permitted discovery on class issues in that case.

representative issues, suggest a course of action which may well preclude this Court from ever reviewing these important issues. It is possible, for example, that this Court may never have the opportunity to review the "person" issue at all.

(2) Respondents further suggest that ". . . petitioners have resisted appellate review of both issues at one time." (Respondents' Brief, p. 10.)

However, the facts demonstrate that the "person" issue was not long ago resolved because of respondents' unremitting resistance to appellate review and not petitioners' lack of diligence. In fact, respondents had ample opportunity to get what they now call the "basic issue" resolved long before India filed suit in this case asserting parens patriae and official representative claims. In November

1972 plaintiff Philippines, the respondents, and the District Court all agreed to an interlocutory appeal from the District Court's decision on the "person" issue. (Transcript of Pre-Trial Conference, November 1, 1972, pp. 67, 80-2.) It was however respondents, for their own reasons, who chose not to file a motion for certification of interlocutory appeal. Had they done so, the "person" issue would have long ago been decided at least by the Court of Appeals.[2/]

In view of the above, respondents' suggestion that foreign sovereign plaintiffs

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2/ Respondents had an even earlier opportunity to pursue an appeal. After the Kuwait decission defendants obtained permission from both the District Court and the Second Circuit Court of Appeals to take an interlocutory appeal on the "person" issue. The case, however, was dismissed without prejudice prior to such appeal.

opposed "all efforts" to have the "person" issue resolved first must be seen as the "red herring" that it is.

(3) Respondents' argument that the parens patriae and official representative issues cannot be resolved before the "person" issue also flies in the face of the decision by the Eighth Circuit which does that very thing and which respondents claim is correct.

The Eighth Circuit was well able to reach a conclusion on the parens patriae issue without reaching a decision on the "person" issue. By now arguing that this Court should deny review of the parens patriae issue because the "person" issue is "unresolved", respondents are in effect claiming that the Eighth Circuit erred thereby and are requesting this Court to review that decision. In so doing respondents do not meet the require-

ments of Rules 22 and 23 since they have not filed a petition for Certiorari within the jurisdiction time limitation set forth therein. Thus, the issue raised by respondents is not properly before this Court.

(4) The feeble effort by respondents to politicize this issue on page 12 of their brief is totally inappropriate. Those arguments of respondents addressed to the "person" issue can be of no force or effect since the "person" issue is not before this Court.

III. Conclusion

For the foregoing reasons and for the reasons set forth in their original Petition, respondents respectfully submit that their petition for a writ of certiorari be granted.

/s/ Julius Kaplan
Julius Kaplan
Attorney for Petitioner,
Government of India
Kirkwood, Kaplan, Russin,
& Vecchi
1218 - 16th Street, N.W.
Washington, D.C. 20036
(202) 638-0060

/s/ Harold C. Petrowitz
Harold C. Petrowitz
Attorney for Petitioner,
Imperial Government of
Iran
Becker, Channell, Becker &
Feldman
1819 H Street, N.W.
Washington, DC. 20006
(202) 293-1919

CERTIFICATE OF SERVICE

I hereby certify that the foregoing PETITIONERS JOINT BRIEF IN REPLY TO JOINT BRIEF FOR RESPONDENTS IN OPPOSITION was served upon the following by depositing copies in the U. S. mail, first class postage prepaid, on February 20, 1976.

Dated: February 20, 1976

/s/ Harold C. Petrowitz
Harold C. Petrowitz

Thomas C. Bartsh, Esquire
Special Master
United States District Court
110 South Fourth Street
Minneapolis, MN 55401

Paul A. Owens, Esquire
United States Courthouse
110 South Fourth Street
Minneapolis, MN 55401

Douglas V. Rigler, Esquire
Foley, Lardner, Hollabaugh & Jacobs
815 Connecticut Avenue, N.W.
Washington, D.C. 20006

Paul C. Sprenger, Esquire
Johnson & Sands
700 First National Bank Building
Minneapolis, MN 55402

Peter Dorsey, Esquire
Dorsey, Marquart, Windhorst,
West & Halladay
2400 First National Bank Bldg.
Minneapolis, MN 55402

Robert E. Cooper, Esquire
c/o Maun, Hazel, Green, Hayes,
Simon and Aretz
600 Title Insurance Building
Minneapolis, MN 55401

John H. Morrison, Esquire
Kirkland & Ellis
200 E. Randolph Drive
Chicago, IL 60601

Samuel W. Murphy, Jr., Esquire
Donovan, Leisure, Newton & Irvine
30 Rockefeller Plaza
New York, N. Y. 10020

Allen F. Maulsby, Esquire
Cravath, Swaine & Moore
One Chase Manhattan Plaza
New York, N. Y. 10005

Merrell E. Clark, Jr., Esquire
Winthrop, Stimson, Putnam & Roberts
40 Wall Street
New York, N. Y. 10005

Charles E. Buffon, Esquire
Covington & Burling
888 - 16th Street, N.W.
Washington, D C. 20006

Robert C. Tucker, Clerk
United States Court of Appeals
for the Eighth Circuit
St. Louis, Missouri 63101

Samuel R. Simon, Esquire
U. S. Department of Justice
Antitrust Division - Room 3322
Washington, D. C. 20530

see

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